Vulnerability to Child Pornography and Loopholes in Legislative Frameworks in South Asia

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Abstract

In recent years easy access to internet has led to a rampant increase in child pornography. Although this technology offers plenty of opportunities for children and adults to learn about the universe, it also contributes tremendously to the sexual exploitation of children, specifically through the distribution of sexually exploitive images of children. Children pornography has led to various other crimes such as sex tourism, sexual abuse of the children etc. Across South Asia including Bangladesh, sexual abuse and sexual exploitation adversely affect the lives of myriads of children. While no child is exempted from the risk of sexual abuse and exploitation, some groups of children are more vulnerable than others. These include children from ethnic minorities and marginalized populations, children living and working on the streets, children separated from their families, children living in slums and the children of sex workers. Moreover, there is an overall lack of appropriate legislation in Bangladesh, as in the rest of the South Asian countries, with regard to child pornography. This paper seeks to provide a comprehensive review covering the nature of child pornography, factors contributing to the vulnerability to child pornography in the region as well as the strengths and weaknesses in the legislations.


Introduction

Though there is general awareness of sexual abuse and exploitation, the awareness with regard to the commercial sexual exploitation of children lags behind in most of the South Asian countries. Children are often considered to be especially vulnerable to different manifestations of commercial sexual exploitations due to their age, social position, increasing unregulated access to internet and sophisticated technology. Furthermore, the religious sensitivity, social stigma, discrimination and social taboo on topics such as sex tourism and child pornography have worsened the situation for children in transitioning societies in South Asia. The worst form of exploitation of children takes place in the prostitution and pornography trades. This is often termed as the modern form of slavery, a growing concern for both industrially developed and poorer parts of the world. The most striking feature of this type of exploitation is that the victims

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are too young to defend their most basic human rights. They are primarily the most defenseless human beings in the society, who are continuously being exploited due to the growing sex market and negative consequences of globalization.

**Defining Child Pornography**

Child pornography usually refers to images or films and in some cases writings depicting sexually explicit activities involving a child. In other words, child pornography is a record of child sexual abuse. The abuse of the child occurs during the sexual acts which are recorded with the help of modern and sophisticated technology. Child pornography therefore, involves sexual abuse and the exploitation of children and is often linked to the prostitution of children, child sex tourism and the trafficking of children for sexual purposes.

In everyday language the term ‘child pornography’ is used to describe pictures that should be labeled ‘sexually abusive images of children’ (Save the Children Denmark, 2005). In the Optional Protocol to CRC, child pornography is defined as being ‘any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes’. According to ECPAT international (2008), a child-safe definition should include visual representations embodied in photographs, films, video cassettes, DVDs, drawings, paintings, sculptures as well as tapes, computer discs and other devices on which audio-visual representations can be recorded. A careful scrutiny of the definitions cited above indicates that there are two obvious aspects to be taken into account while defining child pornography. One includes the materials and the other being the type of depicted activities.

**Socio-cultural Vulnerability to Child Pornography**

Child prostitution, sale of children, trafficking of children for sexual purposes and child pornography, involving both boys and girls, are closely linked with many socio-cultural aspects of the society. The complex matrix of factors that directly or indirectly make children vulnerable to commercial sexual exploitation, sex tourism, prostitution and pornography are analyzed below:

**Abject Poverty**

With a combined population of some 1.4 billion, South Asia is home to half of the world’s poor. The World Bank’s recent database indicates that around 40 percent of the population in South Asia lives with $ 1 a day.³ Although significant achievements have been made in some areas by virtue of a number of poverty-alleviation as well as social safety net programs, a large proportion of the people in South Asia still live below the poverty line. Furthermore, frequent natural disasters make the situation worse. During distress situation, lack of shelter for girls is a great problem. All these factors make people vulnerable and an easy target of traffickers. The prevalence of such socio-economic situation often has helped increase social crimes, especially
human trafficking of women and children. Prostitution, which is also included in human trafficking, is an intolerable social reality and a major issue in South Asia (Naqvi, 2005; REDD BARNA, 1989). Every year hundreds and thousands of children from poor families are driven into the labor market at a very early stage. These children represent the cheapest labor force in the agriculture sector in rural areas and in many industries with a high proportion of manual labor. It is also common to use children as domestic servants in many of the developing countries like Bangladesh, India and Nepal. The worst form of exploitation of children takes place in the prostitution and pornography trade. The ratio of human trafficking is high in South Asia, with girls kidnapped from Pakistan, Nepal, Bangladesh, Sri Lanka, and Maldives and trafficked to mostly Gulf States, where there is a bevy of rich clientele (Naqvi, 2005).

Street-dwelling Livelihood

The UN has estimated that there are 25 million street children in Asia. Poverty, family disintegration due to death, neglect, abuse or abandonment and social unrest are all common triggers for a child’s life on the streets. In a 2006 study out of 200 children living on the street, 79% said they had experienced sexual abuse while on the street (Group Development, 2006). A survey conducted by the Bangladesh Institute of Development Studies estimated the number of street children in Bangladesh to be around 380,000 (Khan, 2008). These homeless children living on the streets continue to be particularly vulnerable to abuse and exploitation as their strategies for survival, usually as rag pickers, beggars or peddlers make them vulnerable to all forms of exploitation and abuse (AB and ChildHope-UK, 2005). They are sometimes forced into offering sexual favours to meet basic needs. As another source reveals, of an estimated 400,000 street children in Bangladesh, nearly 10 percent have been forced into prostitution for survival (De Benitez, 2007:9). A study by Aparajeyo-Bangladesh (2005) cited several forms of sexual exploitation on the streets such as massaging adults and sexual activities in market places, parks, railway stations and boat and bus terminals. Some pimps use city hotels and rented private flats in certain parts of the city.

Globalization and Commodification of Body

Monopoly capitalist globalization involves an unprecedented ‘commodification of female body’ which has been massively industrialized worldwide (Jeffreys, 1999). This process of industrialization, in both its legal and illegal forms, generates profits amounting to billions of dollars. It has created a market of sexual exchanges in which millions of women and children have been converted into sexual commodities. Globalization with its engulfing effects, has also led to the growth of tourism, the expansion of international organized crime, the profitability of trafficking and the consequent commodification of children’s bodies. Large profits lead to the well-known nexus between prostitution cartels, law enforcement agencies and others. Family members are also sometimes involved in the trafficking of children as a means of earning money. Communities along many borders also make profits from trafficking by providing meals, shelter and other support services (UNICEF, 2001).
Commercialization, Advertisement Culture and Sex Tourism

The increased commercialization of culture has affected many societies in the developing part of the world. The media and the advertising business churn out offers of short-lived happiness which can be bought with money, such as consumer goods, the latest fashions, electronic toys etc. These new forms of consumption pattern compounded with highly ambitious lifestyle often affect young and adolescents’ choices over their livelihood. Many of these ambitious girls want to be established by engaging them with the advertisement, ramp modeling, and acting in the dramas and movies etc. Often these young girls are trapped and get involved in unethical and unsocial exploitative relations with their bosses and mentors. On the other hand, sex tourism is on the rise in south Asian countries with an increasing incidence of Pedophilia. Pedophiles often attract street children by providing them with food, shelter, clothing and education. The children are then forced to maintain sexual relations with the providers. As they become used to the practice, however, some of the children continue in the sex trade for monetary gain (Amanullah, 2002).

Brothel based Livelihood

Children who grow up in the brothel environment are at risk of sexual abuse from clients, police and mastans (some of whom are also clients). These children receive discriminatory treatment from the wider community and are rarely permitted to integrate with other children (Amanullah, 2006). A recent study undertaken by Save the Children Australia, with support from Save the Children Sweden presents a compelling picture of the situation of children growing up in Daulotdia and Kandapara brothels. As is the custom, until recently almost all daughters of women engaged in prostitution would follow their mother’s footsteps (Cited in Heissler, 2001). Choice of profession is rarely a possibility because prostitutes and their children are not accepted by the rest of society and are rarely permitted to integrate with those who live outside the brothel.

Wage Employment or Bonded Labor

In developing countries like Bangladesh, India and Nepal, there is an increasing demand for child labor because it is cheap and easily controlled. Cheap child labor is used in the sex trade, domestic work, and other exploitative events where they are often sexually harassed by their masters. In many of the developing countries, bonded families are bound to work for creditors from whom the family has borrowed money, and these masters are often reported to sexually exploit the girls and women of the bonded family. Because of their indebtedness and helplessness the victims cannot protect themselves or revolt against their masters, nor can they reveal the exploitation they suffer from.

Increasing Availability of Low-paid Odd Jobs

One of the pressing sources of discrimination and exploitation of children in the developing countries is the availability of different types of low-paid odd employment opportunities in the informal setting. The most obvious is in connection with employment which borders on prostitution, such as work in bars, certain types of restaurants or hotel, message parlors etc. In
these places work is deliberately combined with sexual exploitation (REDD BARN, 1989). Domestic workers are often used for sexual satisfaction not only by their employers but also by their employers’ friends. However, the victims dare not report the incidents to the police or public agencies for fear of losing their livelihood.

**Labor Migration and Sex Trade**

Migration in terms of its gender dimension has different implications and consequences for the society. For instance, when men migrate and return to their home country, they are easily reintegrated in the family and society, while women are often at risk of being stigmatized, particularly when they migrate alone (Gazi et al., 2001). Due to poverty, recurrent disasters, river bank erosion and social marginalization, a sizable proportion of females is regularly migrating to big cities within and outside the country for seeking employment. These migrant laborers often get entrapped with the sex trade and prostitution by their neighbors, lovers, acquaintances and so on. Often male migrant laborers who cross the border desire sex workers who share a common linguistic and cultural background. This therefore, involves the migration of sex workers from the home country.

**Loopholes in the Legislative Frameworks in South Asia**

**Case of Bangladesh**

Bangladesh government is at final stage to enact a new law titled ‘Pornography Control Act 2011’ to curb cyber crimes and pornography in the country. The cabinet has recently approved in principle this proposed Act with provisions for seven to ten years imprisonment and maximum fine of Tk. 500,000 for indulging in acts related to pornography. Currently, since no more details so far are made public, it is not possible to evaluate this proposed Act. Previously, there were several laws relating to protecting the rights of the children. However, they are not consolidated in one statute. Instead, they are scattered in various laws and statutes, such as Constitutional provisions, the Penal Code, the Children’s Act, 1974 and the Women and Children Repression Prevention Act, 2000 etc. For example, Bangladesh Penal Code contains provisions related to obscene matter by prohibiting the possession, sale, distribution, exhibition, or circulation of obscene books, pamphlets, papers, drawings, paintings, figures or other objects, and provides enhanced penalties for those who sell, distribute, exhibit or circulate obscene objects to any person under 21 years of age. Furthermore, according to the Suppression of Immoral Traffic Act, 1933 no girl under 18 years of age may be engaged in sex trade. The Section 42 of the Children Act, 1974 prohibits girls less than 16 years of age, to work as a sex worker. However, none of these acts makes any reference to boys engaged in sex trade or forced prostitution. Again, under ‘Women and Children Repression Prevention Act 2000’ (amended in 2003), 42 Special Tribunals have been established in 33 districts of the country and a special Judge has been posted to each tribunal for trying cases only relating to violence against women and children including trafficking of women and children (GoB, 2006). Another Act titled ‘Women and Children
Repression Prevention Act’ also contains specific penalties for trafficking in women and children with a provision for death sentence or life imprisonment; and the amendment to Women and Children Repression Prevention Act, 2003 defines a child as a person under the age of 16.

Except the newly proposed ‘Pornography Control Act 2011’, currently there are no comprehensive legislative frameworks to protect children from pornography transmitted/telecast through sophisticated electronic media and other allied sources. The provisions of the Penal Code of 1860 so far forbids the possession or production of pornography and is primarily concerned with protecting the public from the sale and distribution of materials that may ‘tend to deprave and corrupt’. The afore-mentioned legal measures do not specifically mention sexual abuse or exploitation of children in pornography. While the Penal Code can protect children from the effects of exposure to pornography through its prohibition against selling pornographic materials to children under 20, it does not protect children from the sexual violence inherent in producing pornography. Moreover, Bangladesh still lacks a comprehensive legal framework for deterring crimes or managing investigations related to the commercial sexual exploitation of children. Bangladesh does not have legal procedures to facilitate the reporting, investigating, or prosecuting of crimes related to the commercial sexual exploitation of children in appropriate manners (ECPAT international, 2006a).

Case of India

India has several laws that address various aspects of the commercial sexual exploitation of children: the Immoral Traffic Prevention Act, 1956 (ITPA); Indecent Representation of Women (Prohibition) Act, 1986 (IRWPA); the Information Technology Act, 2000 (ITA) and several provisions of the Penal Code. The Penal Code of India prohibits the sale of obscene books; the sale of obscene objects to a young person; and obscene acts and songs by rendering the person performing them subject to prosecution, but not the audience or those who make the person perform the obscene act or song. Punishments for violations may be from two to five years’ imprisonment and a fine between Rs. 2,000 and 5,000. On the other hand, the Information Technology Act (ITA) contains a provision that prohibits electronically publishing or transmitting ‘any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons...’. Violators may be punished with between five and ten years’ imprisonment and a fine between Rs. 100,000 and 200,000.

A thorough review of the laws related to child pornography in India reveals that none of the laws discussed above specifically refer to children, define or prohibit child pornography. The ITA covers digital and electronic media, but it suffers from the same defects as the Penal Code provisions given its vague ban of lascivious material. IRWPA is also limited to visual representations, leaving out audio materials and simulated images, which are covered under international law; and, IRWPA does not include boys. Thus, Indian laws require greater clarity in order to conform to international standards for protection against child pornography.
Case of Pakistan

Pakistan has not so far enacted specific legislation to combat child pornography. Pakistan’s laws protect children inconsistently. In particular, Pakistan’s Offence of Zina (Enforcement of Hudood) Ordinance of 1979 (Zina Ordinance) often punish child victims of commercial sexual exploitation instead of protecting the child (ECPAT International, 2006c). The Pakistan Penal Code prohibits making, producing or possessing obscene materials for sale, hire, public distribution, exhibition, or circulation. Importing, exporting or conveying any obscene object is also punishable. In addition, advertising that a person is engaged in or ready to engage in any of the foregoing acts or that a person can procure an obscene object is an offence. All these activities may be punished with up to three months’ imprisonment, or a fine, or both. However, no differentiation so far is made between adult and child pornography. Hence, child pornography falls under a general ban on obscene materials. It is unclear whether the obscenity law in the Penal Code applies to child pornographic images as defined by the Optional Protocol - images depicting a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. Even if it does, this law does not include electronic or digital images, audio recordings, or simulated images, nor does it punish the mere possession of such images or recordings. Thus, Pakistani law does not meet international standards against child pornography (ECPAT International, 2006c: 23).

Case of Nepal

Though Nepal incorporates international instruments, however, many existing Nepalese laws are not coherent with international standards. The Children’s Act 2006 prohibits taking photographs, giving permission to take photographs, and distributing or exhibiting photographs of children with the purpose of involving them in an immoral profession, with provisions of punishment up to one year imprisonment, a 10,000 Rupee fine, or both. In addition to imprisonment and a fine, the offender may be ordered to compensate the child in proportion to the damage caused. Another statute titled ‘Electronic Transaction Ordinance 2004’ also prohibits publishing or displaying materials that are prohibited by law and against public morality or decency. An important aspect of this ordinance is that it applies to persons committing Internet-related offences outside Nepal if the computer, computer system, or computer network system from which the act is committed, is located in Nepal. If this ordinance is strictly implemented, it has the potential to discourage operators and distributors of Internet sites from displaying child pornography and may result in a decrease of child pornography in Nepal.

ECPAT International (2006d: 24-25) stressed that Nepal’s laws against child pornography should be strengthened to conform to those of the Optional Protocol to the Convention of Rights of Children (CRC), to which Nepal is party. The Children’s Act provision is vague because it is unclear what constitutes a picture that ‘involves a child in an immoral profession’ and whether such a picture covers all of the depictions contained in the Optional Protocol. Similarly, the Public Offences Act fails to define ‘pornography’ and this Act, together with the Electronic Transaction Ordinance, is aimed at protecting public morality, rather than protecting the human
rights of children exploited through the creation, display, possession and distribution of child pornography. While the Electronic Transaction Ordinance addresses electronic images, its focus is public morality rather than children’s rights; and none of Nepal’s laws address the issue of simulated child pornographic images.

Case of Sri Lanka

There is specific legislation related to protecting child pornography in Sri Lanka. The Vagrants Ordinance makes it illegal to publicly exhibit any obscene print, picture or other indecent exhibition to the repulsion or annoyance of others. Similarly, the Penal Code prohibits selling, distributing, importing, printing for sale or willfully exhibiting in public an obscene book, pamphlet, paper, drawing, painting, photograph, representation or figure, as well as possessing any of these obscene materials for sale, distribution, or public exhibition. Sri Lanka recently enacted legislation that requires Internet Service Providers (ISPs) to ensure the protection of child sexual abuse. Violators of either of these provisions may be punished with up to two years’ imprisonment, a fine, or both.

However, as a whole, Sri Lankan laws related to child pornography are too vague and fall short of international standards. While a few provisions related to obscenity may be used to prosecute child pornography offences, it is unclear whether child pornographic images are considered obscene. Moreover, the law fails to punish the mere possession of ‘obscene’ materials, and does not cover the distribution or possession of child pornographic images. While the law prohibits using a computer facility to commit an offence related to child sexual abuse, it is unclear whether ‘child sexual abuse’ under this law includes the creation of child pornographic images (ECPAT International, 2006c: 26).

Case of Bhutan and Afghanistan

There is no specific legislation to protect child pornography in Bhutan. However, child pornography, child prostitution, rape and other forms of child sexual abuse are all penal offences under the Penal Code of Bhutan 2004. According to Article 225(b) of the Penal Code of Bhutan, ‘[a] defendant shall be guilty of the defense of pedophilia if the defendant…sells manufactures, distributes, or otherwise deals in material that contains any depiction of a child engaged in sexual contact’. There is no specific legislation to protect child pornography in Afghanistan too. Shariah Law of Afghanistan defines 14 years of age for girls and 16 years for boys. Only Press Law 2002 (No. 81) prohibits the publication of articles and photos which contravene traditional values and morals.
Table 1: Summary of the aspects of legislations related to child pornography in South Asia (adopted from ICMEC, 2008)

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<thead>
<tr>
<th>Country</th>
<th>Penal Code on child pornography</th>
<th>Legislation specific to child pornography</th>
<th>Child pornography defined</th>
<th>Computer facilitated offences</th>
<th>ISP Reporting</th>
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Conclusion

The preceding analysis clearly indicates the importance of undertaking systematic empirical studies to explore the extent of child pornography and its divergent socio-cultural vulnerability aspects in South Asia. In addition, the multifarious aspects of vulnerability to child pornography point to the shift of future researcher’s attention from mere vulnerability to child pornography to the sociology of pornography. On the other hand, the lack of adequate and coherent legal measures to protect child pornography has been a matter of grave concern in South Asia. Whereas there are many genuine legal efforts aimed at strengthening vulnerability to child pornography to the sociology of pornography. On the other hand, the lack of adequate and coherent legal measures to prevent child pornography and sexual abuse of children. In this respect, the situation is particularly severe in Bangladesh, Bhutan and Afghanistan as there is no legislation specific to child pornography in these countries. Though Bangladesh is trying to finalize a new Act entitled ‘Pornography Control Act 2011’, we do not know so far what provisions are there particularly for child sexual abuse and commercial use of child pornographic materials. Generally there are loopholes in the existing child rights protecting laws in other countries too. Therefore, legislative frameworks on child pornography must be developed without further delay keeping consistency with the international legal standard.
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Vulnerability to Child Pornography and Legislations in South Asia


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**End Note**

